IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

C.R.P. NPD. No.704 of 2004

M/s. T.V. Sundaram Iyengar and Sons Ltd.,
Authorized dealer for Pal Peugot Ltd.,
Omalur Main Road,
Salem - 9.

.. Second defendant/Petitioner/
Revision Petitioner

Versus

S. Raghunathan ..Plaintiff Respondent/Respondent

The Civil Revision Petition has been filed under Section 115 of Civil Procedure Code praying to set aside the judgment and decree passed in I.A.No.184 of 2003 in O.S.No.558 of 1999 dated 04.12.2003 by Additional Subordinate Judge, Salem.

For Petitioner : Mr. Satish Parasaran
For Respondent : Mr. V. Nicholas

ORDER

The Civil Revision Petitioner herein is the applicant in I.A.No.184 of 2003 and the second defendant in the suit O.S.No.558 of 1999 on the file of the learned Additional Subordinate Judge, Salem. The Civil Revision petitioner has filed an Interlocutory Application No. 184 of 2003 praying to condone the delay of 539 days in filing the application to set aside the exparte decree passed against the revision petitioner on 10.07.2001, under section 5 of the Limitation Act. In the said application, the revision petitioner / applicant/ second defendant has inter-alia stated that for non-filing of written statement, the revision petitioner/applicant/second defendant was set exparte and that exparte decree was passed on 10.07.2001 and the then Advocate for the Civil revision petitioner /applicant/second defendant did not inform the factum of exparte decree to the revision petitioner and only when the civil revision petitioner received the execution notice, the civil revision petitioner came to know about the passing of exparte decree.

2. In the counter filed by the respondent/plaintiff, it is stated that the revision petitioner/applicant/second defendant has not filed the written statement along with the application to set aside

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the exparte decree and that the applicant has to explain the delay of each and every day and that the revision petitioner/ applicant/second defendant ought to have been diligent in defending the suit and that there is no bonafide or merit in the application, which has been filed only to drag on the proceedings and therefore prayed for dismissal of the said application.

3. The learned Additional Subordinate Judge, Salem in his order dated 04.12.2003 passed in I.A.No.184 of 2003 in O.S.No. 558 of 1999 has observed that each and every day delay was not explained by the applicant and only to defeat the execution proceedings and with a view to delay the proceedings, the present application has been filed and finally dismissed the application.

4. As against the said order passed by the learned Additional Subordinate Judge, Salem dated 04.12.2003 in I.A.No.184 of 2003 in O.S.No.558 of 1999, the present Civil Revision Petition has been preferred by the Civil Revision Petitioner/applicant/ second defendant.

5. The learned counsel for the civil revision petitioner contends that it was due to the mistake of the Advocate in not properly advising the civil revision petitioner/applicant/second defendant, the written statement was not filed before the lower Court and that in the said I.A.No.184 of 2003 in O.S.No.558 of 1999, the civil revision petitioner/applicant / second defendant has shown sufficient cause and therefore, prays for allowing the Civil Revision Petition.

6. It is an admitted fact that there is a delay of 539 days in filing the I.A.No.184 of 2003 in O.S.No.558 of 1999 to set aside the exparte decree. The learned counsel for the Civil Revision Petitioner pressed into service the decision "(1998) 7 Supreme Court Cases 123 " (N. Balakrishnan ..vs.. M. Krishnamurthy), wherein it is observed as follows :-

> "A. Limitation Act, 1963 - S.5 - condonation of delay - Discretion of Court - How to exercise - Guidelines stated - Words "sufficient cause" should be construed liberally - Acceptability of explanation for the delay is the sole criterion, length of delay not relevant - In absence of anything showing malafide or deliberate delay as a dilatory tactic, court should normally condone the delay - However, while doing so Court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly - Where a court condones delay in positive exercise of discretion, superior court and more particularly the revisional court should not normally disturb the same - But where request for condonation of delay is refused, it would be open to the superior court to come to its own finding on the basis of explanation for the delay given by the party - delay

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

on the part of defendant - appellant of 883 days in approaching the court against dismissal of his application to set aside exparte decree passed against him - Non-action on the part of his advocate explained as cause for the delay - Appellant also complaining about conduct of the advocate before Consumer Forum and getting Rs.50,000/- as compensation - Appellant's explanation for the delay accepted and delay condoned by trial court - But in revision High Court setting aside the order of trial court on ground that appellant was negligent and was not careful enough to meet the advocate to verify the stage of the proceedings for a long time - Held, High Court in revision erred in interfering with the exercise of jurisdiction by trial Court in condoning the delay when appellant's conduct did not as a whole warrant castigating him as an irresponsible litigant having regard to present busy and preoccupied life."

In the aforesaid decision, it is held that " Rules of limitation are not meant to destroy the rights of the parties and they are meant to see that the parties did not resort to dilatory tactics, but seek their remedy promptly and the object of providing a legal remedy is to repair the damage caused by reason of legal injury."

7. It is pertinent to point out that generally a party does not stand to benefit by filing an application late and refusing to condone the delay can result in a meritorious matter being thrown out at the nascent stage and cause of justice being defeated. As against this, the highest that can happen is that a cause would be decided on merits after hearing the litigants. A pedantic approach should not be made by the Court of law while dealing with the condonation of delay matters. On the other hand, the courts of law are to adopt a pragmatic approach. In this connection, it is not out of place to make a mention that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim any vested right in injustice being done because of non deliberate delay. As a matter of fact, a party does not stand the benefit by resorting to delay. Per contra, he runs a serious risk. It cannot be again said that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. As far as the present case is concerned, this Court is of the considered opinion that the term ' Sufficient Cause', must be viewed liberally and taking a liberal view in the matter, this Court is satisfied with the reason furnished in I.A.No.184 of 2003 in O.S.No.558 of 1999 for the condonation of delay of 539 days and allows the Civil Revision Petition with a direction that the Civil Revision Petitioner shall remit a sum of Rs.600/- (Rupees six hundred only) to the Tamil Nadu Mediation and Conciliation Centre, Chennai, within two

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

weeks from the date of this order and produce a receipt before the Registrar General, High Court, Madras, failing which the Civil Revision Petition will stand dismissed automatically without any further reference. However, there shall be no orders as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

mra

To

1. The Additional Subordinate Judge, Salem
2. The Registrar General, High Court, Chennai.
3. The Secretary,
   Tamil Nadu Medication and Conciliation Centre,
   Chennai.
4. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.Sathish Parasaran, Advocate Sr 72770
+1cc to Mr.V.Nicholas,Advocate Sr 72816

VC (CO)
km/4.1.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/